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4 **UNITED STATES DISTRICT COURT**
5 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
6

7 **COLTON JAMES ROOD,**

8 **Petitioner,**

9 **v.**

10 **DEPARTMENT OF CORRECTIONS,**

11 **Respondent.**
12
13

Case No. 1:20-cv-01018-AWI-HBK (HC)

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS, AND DIRECTING CLERK OF
COURT TO ENTER JUDGMENT AND
CLOSE CASE**

(Doc. No. 32)

14 Petitioner Colton James Rood is a state prisoner proceeding in propria persona with a
15 petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Doc. No. 1. On March 17, 2021,
16 the magistrate judge assigned to the case issued findings and recommendations to dismiss the
17 petition. Doc. No. 32. These findings and recommendations were served on all parties and
18 contained notice that any objections were to be filed within thirty days from the date of service of
19 that order. Id. at 4. Petitioner filed objections to the findings and recommendations, and
20 Respondent Department of Corrections filed a reply. Doc. Nos. 40 & 42.

21 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a
22 de novo review of the case. Having carefully reviewed the entire file, including Petitioner's
23 objections and Respondent's reply, the Court concludes that the magistrate judge's findings and
24 recommendations are supported by the record and proper analysis.

25 In addition, the Court declines to issue a certificate of appealability. A state prisoner
26 seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's denial of
27 his petition, and an appeal is only allowed in certain circumstances. Miller-El v. Cockrell, 537
28 U.S. 322, 335–36 (2003). The controlling statute in determining whether to issue a certificate of

1 appealability provides as follows:

2 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a
3 district judge, the final order shall be subject to review, on appeal, by the court of
4 appeals for the circuit in which the proceeding is held.

5 (b) There shall be no right of appeal from a final order in a proceeding to test the
6 validity of a warrant to remove to another district or place for commitment or trial
7 a person charged with a criminal offense against the United States, or to test the
8 validity of such person's detention pending removal proceedings.

9 (c)

10 (1) Unless a circuit justice or judge issues a certificate of appealability, an
11 appeal may not be taken to the court of appeals from—

12 (A) the final order in a habeas corpus proceeding in which the
13 detention complained of arises out of process issued by a State
14 court; or

15 (B) the final order in a proceeding under section 2255.

16 (2) A certificate of appealability may issue under paragraph (1) only if the
17 applicant has made a substantial showing of the denial of a constitutional
18 right.

19 (3) The certificate of appealability under paragraph (1) shall indicate which
20 specific issue or issues satisfy the showing required by paragraph (2).

21 28 U.S.C. § 2253.

22 If a court denies a petitioner's petition, the court may only issue a certificate of
23 appealability when the petitioner makes a substantial showing of the denial of a constitutional
24 right. § 2253(c)(2). To make a substantial showing, the petitioner must establish that "reasonable
25 jurists could debate whether (or, for that matter, agree that) the petition should have been resolved
26 in a different manner or that the issues presented were 'adequate to deserve encouragement to
27 proceed further.'" Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quoting Barefoot v. Estelle, 463
28 U.S. 880, 893 & n.4 (1983)).

29 In this case, the Court finds that Petitioner has not made the required substantial showing
30 of the denial of a constitutional right to justify the issuance of a certificate of appealability.
31 Reasonable jurists would not find the Court's determination that Petitioner is not entitled to
32 federal habeas corpus relief debatable, wrong, or deserving of encouragement to proceed further.
33 Thus, the Court will decline to issue a certificate of appealability.

ORDER

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations (Doc. No. 32) issued on March 17, 2021, are ADOPTED in full;
2. The petition for writ of habeas corpus (Doc. No. 1) is DISMISSED;
3. The Clerk of Court shall ENTER judgment and CLOSE the file; and
4. The Court DECLINES to issue a certificate of appealability.

IT IS SO ORDERED.

Dated: August 4, 2021



SENIOR DISTRICT JUDGE